STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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ILLINOIS DEPARTMENT OF COMMERCE	)	
AND ECONOMIC OPPORTUNITY	)	
	)	**Docket 13-0499**
	)	
Approval of its Energy Efficiency Portfolio and	)	
Plan Pursuant to Sections 8-103(e) and (f) and	)	
8-104(e) and (f) of the Public Utilities Act	)	

REPLY BRIEF OF THE ENVIRONMENTAL LAW & POLICY CENTER

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I. Introduction

This case involves the "Integrated Natural Gas & Electricity Energy Efficiency Portfolio Plan" filed by the Illinois Department of Commerce and Economic Opportunity (DCEO or "the Department") pursuant to Sections 8-103 and 8-104 of the Illinois Public Utilities Act. *See* DCEO Ex. 1.1 (DCEO Plan); 220 ILCS 5/8-103(e) and (f) (electricity); 220 ILCS 5/8-104(e) and (f) (natural gas). The parties filed initial briefs on December 5, 2013. The Environmental Law & Policy Center's (ELPC) Reply Brief will focus on the following issues raised in the parties' initial briefs:

1. ELPC agrees with the arguments advanced by the Natural Resources Defense Council (NRDC) and the Office of the Attorney Generation (AG) that DCEO's overall savings goals should be increased to reflect actual savings achieved in prior years.
2. ELPC agrees with NRDC, the AG and the Staff of the Illinois Commerce Commission (Staff) that DCEO should not abandon the current system of using a net-to-gross approach to evaluate savings.
3. ELPC recommends that the Commission should explicitly authorize DCEO to use EEPS funds to more effectively audit and verify savings from the Natural Gas Self-Direct Customer Program.

II. Discussion

A. The Commission Should Increase DCEO's Savings Goals Commensurate to Its Actual Savings in Prior Years.

First, and most importantly in this proceeding, ELPC submits that DCEO has lowballed its energy savings goals and is being overly conservative with respect to the amount of savings that are achievable through its proposed programs. The NRDC and the AG both note that DCEO has not adequately justified why it is projecting significantly more costs per unit of savings in

Plan 3 than it actually spent in Plan 2. *See* AG Initial Br. at 17; NRDC Initial Br. at 8. ELPC supports NRDC's recommendation that the Commission order a thirty percent increase in DCEO's electric goals and an eighty percent increase across the gas portfolio. NRDC Initial Br. at 6-7. An increase of this magnitude would bring DCEO's goals in line with the actual savings per dollar that the Department actually achieved in prior years. *Id.* NRDC and the AG's request is based on a very reasonable argument that DCEO base its goals for Plan 3 on actual Plan 2 performance, unless there is a compelling reason to believe that DCEO cannot achieve a similar level of savings in this Plan. *See* NRDC Initial Br. at 7.

The Commission should bear in mind DCEO's burden of proof in this proceeding and not simply allow it to make conclusory arguments. DCEO's Initial Brief gives short shrift to this issue, making a few conclusory statements about the targets being reasonable and failing to cite even its own testimony on the issue. DCEO Brief at 10. However, even if DCEO had spent more time on this issue in its Brief, its testimony is too thin to support its proposed low targets. Witness Mrozowski notes that DCEO anticipates the lower savings available from lighting (recognizing the EISA standards) and more reliance on long-lived measures, but merely stating that these obstacles affect savings falls far short of justifying such low targets. (DCEO Ex. 1.0 at 10.) If the federal lighting standards affect the lighting savings in insurmountable ways, why does DCEO project higher costs in Program Year 7 ($405/MWh), when the new standard for linear fluorescent fixtures will have no effect, than in Program Year 9 ($382/MWh) when the T-12 can no longer be used as baseline? *See* NRDC Initial Br. at 8-9.

Supporting DCEO, Staff argues that DCEO's goals are too aggressive and "modifications may be appropriate" to "set more reasonable goals that the DCEO is more likely to achieve within this three-year plan." Staff Initial Br. at 6-7. According to Staff, the Department has historically committed to savings goals that it has been unable to achieve, and its proposals in this case "do not rely enough on past program participation and performance," which historically "have been low." *Id.* at 6-7. Analyzing this issue, both Staff and NRDC essentially use the same evidence (DCEO's past performance) to reach opposite conclusions. ELPC respectfully suggests that the conclusions that NRDC has drawn from DCEO's past performance are more relevant and persuasive than Staff's. NRDC correctly emphasizes that on the electric side, DCEO is proposing to spend a little more than twice as much per unit of savings than it spent in Gas Plan Year 1 (GPY1) and 30 percent more per MWh than it spent in PY4. NRDC Brief at 4. Similarly, on the gas side, NRDC's Table 5 shows that six of seven programs cost significantly more to operate than they did in year 1, and for four public sector programs the cost is more than three times what it was in year 1. *Id.* at 6. Just because DCEO failed to achieve goals that were set in prior planning years and had low participation rates for some of its programs does not mean that the goals set in *this* case are not achievable, nor does it support a conclusion that DCEO would be unable to achieve a similar level of savings reductions per dollar that it *actually achieved* in the previous plan.

While DCEO argues "it is important to be conservative in its assumptions," savings goals serve an important purpose to promote accountability and responsibility for using ratepayer money as effectively as possible. Nobody benefits from goals that are too low. As NRDC points out, "having goals so severely low as is the case here encourages complacency, less innovation, less effective management, lower achievement and, therefore, lower economic benefits to ratepayers." NRDC Initial Br. at 11. Given its responsibility to generate savings as close to the statutory targets as possible, the Commission should require DCEO to meet reasonable goals that challenge the agency, not goals that it can meet without being creative and innovative.

Accordingly, ELPC respectfully joins in NRDC's and the AG's request for the Commission to Order DCEO to refile a Plan with a thirty percent increase in DCEO's electric goals and an eighty percent increase across the gas portfolio.

B. The Commission Should Not Abandon the Current System of Using a Net-to-Gross Approach to Evaluate DCEO's Savings.

Instead of the standard "net-to-gross" (NTG) analysis, DCEO advocates for an "adjusted gross" approach, making only adjustments for factors such as "data errors, installation and persistence rates, and hours of use," but not making adjustments for free ridership or spillover. (DCEO Ex. 1.0 at 37) Staff, NRDC, ELPC and the AG all oppose DCEO's request. CUB is the only party that supports DCEO's position on adjusted gross savings.

DCEO argues that NTG is a "flawed approach," but none of DCEO's arguments justify such a dramatic departure from the evaluation approach used in Illinois for many years. First, DCEO argues that the calculated NTG values for the Illinois EEPS programs have "varied considerably for similar or identical programs and from year to year, generally without any explanation." DCEO Initial Br. at 34. DCEO also argues that NTG analysis is "complex," that there is a "lack of consensus" about how to define and apply various factors, and that spillover is "difficult and costly to measure." *Id.* DCEO also cites a MEEA report and a personal telephone call with Marty Kushler, who apparently told DCEO that some other Midwestern states use an adjusted gross approach "for all or a portion" of their programs. *Id.*

All of DCEO's arguments ignore the fact that, at least in Illinois, state law and multiple Commission Orders require an evaluation approach that focuses on *net* savings not gross savings. Sections 8-103 and 8-104 require the utilities (in coordination with DCEO) to "implement cost-effective energy efficiency measures" to meet incremental energy savings goals. 220 ILCS 5/8-103(b); 220 ILCS 5/8-104(c). Section 8-104 explicitly requires the use of the TRC test to "quantify the *net* savings" obtained through the EE measures. 220 ILCS 5/8-104(b). The whole point of the EEPS statutory framework is to determine whether or not savings are a direct result of the utilities' programs, not to count savings that would have occurred in the absence of the programs. Without measuring the "net" impact of the measures, there is no way for program evaluators to determine whether or not savings are actually attributable to a utility's programs. Thus, the Commission has stated that "the gas and electric energy efficiency provisions establish *net savings goals*" and has endorsed a NTG approach in each of its Orders in prior EEPS cases dating back to 2007. ICC Docket No. 10-0568, Order of December 21, 2012 at 71; *see also* ICC Docket No. 10-0570, Order of December 21, 2010 at 47; ICC Docket 07-0539, Order of February 6, 2008 at 31; ICC Docket 07-0540, Order of February 6, 2008 at 42.

DCEO's concerns about the lack of NTG consistency and consensus are reasons to study and *improve* the application of NTG analysis in Illinois, not to abandon NTG analysis altogether. As NRDC witness Neme explains, "despite all of the challenges associated with estimating net-to-gross adjustments, the cost of not doing so is too great." NRDC Initial Br. at 27. Staff Witness Brightwell, ELPC Witness Crandall and AG witness Mosenthal also express serious concerns about DCEO's recommended approach. (*See* Staff Ex. 4.0 at 3-4; ELPC Ex. 1.0 at 10-11; AG Ex. 1.0 at 19-23; NRDC Ex. 1.0 at 22-23.)

CUB witness Rebecca Devens is the only witness that supports DCEO's position on NTG. Ms. Devens argues that "it is not reasonable" to assess NTG for DCEO's public sector programs because many public sector customers are already aware of the existence of DCEO's programs and their decision to invest in an efficiency upgrade is "inextricably linked" to the existence of the program. CUB Initial Br. at 5. While that may be true, it is not clear how this is different than the decisions of other EEPS participants, particularly large commercial or industrial customers, who make decision to invest in efficiency based on the existence of a utility program.

CUB and DCEO also argue that it would be inappropriate to "turn away" potential public sector customers from DCEO's programs because of concerns that they are free riders. *See* DCEO Initial Br. at 35; CUB Initial Br. at 6. But nobody is proposing that DCEO turn away any customers. As witness Mosenthal points out, the issue is not whether free riders can participate in DCEO's programs (they clearly can). Instead, the issue is "one of accurately attempting to estimate the net impact of the program." AG Initial Br. at 22. Without at least attempting to assess NTG, program administrators will have no incentive to try to minimize free ridership through program design and implementation practices. *Id.* Moreover, as Mr. Neme points out, abandoning NTG analysis in Illinois would "open the floodgates for energy efficiency program developers to 'chase' free riders because those customers would be the easiest to capture savings from since they were going to implement the energy efficiency measure anyway." NRDC Initial Br. at 27.

For all of these reasons, the Commission should reject DCEO's request to abandon NTG analysis for public sector programs. ELPC agrees with the AG that given DCEO's agreement to apply NTG results retrospectively, there is no need for the Commission to mandate the adoption of the proposed uniform NTG framework recommended in the testimonies of AG witness Mosenthal and ELPC witness Crandall. *See* AG Initial Br. at 25.

C. The Commission Should Explicitly Authorize the Use of EEPS Funds for DCEO to Audit and Verify Savings from the Natural Gas Self-Direct Customer Program.

ELPC, NRDC, and the AG have all urged the Commission to require DCEO to more effectively audit and verify the claimed natural gas savings by self-direct customers to ensure that these claimed savings are real and the proposed programs are effective. *See* ELPC Initial Br. at 7-9; AG Initial Br. at 49; NRDC Initial Br.at 22-27. Notably, DCEO no longer appears to be arguing that it lacks the legal authority to effectively audit these programs and indicates that it is "willing to use EEPS dollars" to expand its project verification process for natural gas self-direct customers as recommended by the intervenors. DCEO Initial Brief at 31. As several parties pointed out, DCEO clearly has the statutory authority and responsibility to audit these programs to ensure that the projected savings actually occur. *See* ELPC Initial Br. at 7-9; AG Initial Br. at 49; NRDC Initial Br.at 22-27. In order to eliminate any uncertainty, the Commission should order DCEO to more effectively audit and verify savings from natural gas self-direct customers and make clear the Department is authorized to use EEPS funds for that purpose.

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Respectfully submitted,

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